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Access to Public Records

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What is the Access to Public Records Act?

The Access to Public Records Act is an Indiana statute that sets forward the procedures by which a member of the public can request access to governmental public records. The statute states explicitly that “it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1. Indiana places importance on government transparency, and the act is construed liberally in favor of disclosure.

Generally, the Access to Public Records Act (“APRA”) provides that **all records** maintained by a public agency are public records, but some records may be confidential or disclosable at the discretion of the public agency. All records which do not fall into the statutory exceptions *must be made available for public inspection and copying*.

What is a Public Record?

Public record is defined very broadly. The definition in the statute explains that a public record means “any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, electronically stored data, or any other material, regardless of form or characteristics.” Ind. Code §5-14-3-2(o).

Therefore, the vast majority of records and documents created by DCS are public records according to the statute.

What do I need to know about APRA Requests?

Any employee that receives a public records request under APRA must direct the request to their Local Office Attorney for processing and potential response, and comply with requests for information promptly.

In person or telephonic requests for public records are considered denied after a twenty-four (24) hour period expires following the request without permitting the person to copy the records. An agency is required to respond to a written request within seven (7) days, and to produce the records within a reasonable time. Therefore, DCS is required to identify any records that fall within the request, make a determination regarding any records that are non-disclosable, and communicate an acknowledgement to the requester within the initial timeframe. **It is essential that all DCS employees comply with requests for information about what records exist as soon as possible. These requests for information will come from Central Office Legal or your Local Office Attorney, and should be responded to promptly.**

APRA places an *individual responsibility* on state employees to comply with and reasonably respond to public records requests. Any official or management level state employee who intentionally withholds public records can be subjected to civil liability under APRA. Ind. Code §5-14-3-9.5.

What DCS records are excluded from APRA?

The statute enumerates various categories of records that are not disclosable or that are disclosable at the discretion of the agency. Certain documents held by DCS are considered confidential pursuant to state statute, and therefore are exempted from disclosure pursuant to APRA. For example, the most common confidential records within DCS are records containing child welfare information relating to reports of child abuse or neglect, which are confidential pursuant to Ind. Code § 31-33-18-1 and excluded from disclosure pursuant to APRA, Ind. Code § 5-14-3-4(a)(1).

There are other types records that are excluded from APRA that may be in DCS's possession, such as documents declared confidential by federal statute, patient medical records unless the patient gives written consent, photographs or recordings of an autopsy, or social security numbers.

The agency also has discretion to deny disclosure of other types of records, such as attorney work product, investigatory records of law enforcement agencies, deliberative or advisory material that is intra-agency or interagency, and certain personnel records.

Any agency that receives confidential information from another agency must maintain it as confidential information, and treat it as such when responding to records requests.

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